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OFFICE OF PETITIONS

In re Application of :
Fernandez et al. : CORRECTED
Application No. 10/665,580 : DECISION ON PETITION
Filed: 19 September, 2003 :
Atty Docket No. 113794.138 US2 :

This is a corrected decision on the petition filed on 16 September, 2005, under 37 CFR 1.137(b),¹ to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned on 10 May, 2005, for failure to timely file a response to non-final Office action mailed on 9 February, 2005, which set a three (3) month shortened statutory period for reply. No extensions of time in accordance with 37

¹ Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional utility or plant application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continuing examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof. In an application, abandoned for failure to pay the publication fee, the required reply must include payment of the publication fee.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c)).

CFR 1.136(a) were obtained. Notice of Abandonment was mailed on 7 September, 2005.

The petition is accompanied by an amendment to the claims.

The address on the petition is different than the address in Office records. A courtesy copy of this decision will be mailed to the address listed on the petition. All future correspondence will be mailed solely to the address of record.

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay.² In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that it is not correct that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

An extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply.³ The three-month extension request filed on 16 September, 2005, was submitted more than three (3) months after the end of the period for reply to the Office action mailed on 9 February, 2005, and therefore is unnecessary. The extension of time fee paid on 16 September, 2005, will be credited to counsel's deposit account, No. 03-3975, as authorized.

The application file is being referred to Technology Center Art Unit 2863 for further processing.

² See 37 CFR 10.18(b) and Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178 (October 10, 1997), 1208 Off. Gaz. Pat. Office 63, 103 (October 21, 1997).

³ See In re Application of S., 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988).

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3231.



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